

OZARK-MAHONING COMPANY

IBLA 74-264

Decided September 17, 1974

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting, in part, application for hardrock prospecting permit on acquired lands, ES 9198.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency

Prospecting permits for hardrock minerals within lands subject to the Mineral Leasing Act for Acquired Lands or Reorganization Plan No. 3 of 1946 may not be granted without consent of the administrative agency controlling the surface of the land.

2. Mineral Leasing Act for Acquired Lands: Consent of Agency

Until the time of actual issuance of a hardrock prospecting permit on acquired lands, the agency having surface jurisdiction may withdraw its prior conditional consent to such permit.

3. Mineral Leasing Act for Acquired Lands: Consent of Agency

An applicant, rather than this Department, must go to the agency involved to seek any modification of its failure to grant consent to a prospecting permit on acquired lands.

APPEARANCES: B. L. Perry, of Ozark-Mahoning Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Ozark-Mahoning Company (Ozark) appeals from the March 25, 1974, decision of Eastern States Office, Bureau of Land Management

(BLM), denying, in part, Ozark's application ES 9198 for a hardrock prospecting permit on acquired lands of the United States, in which the United States owns the mineral interest, within Shawnee National Forest, Pope County, Illinois. Ozark filed its application on May 13, 1971, for some 2415 acres. By decision of September 25, 1973, BLM rejected the application as to some 1310 acres in which the United States has no mineral interest, 1/ and called upon Ozark to accept certain stipulations required by the Forest Service as a condition precedent to granting a prospecting permit for the lands remaining in the application. 2/ BLM overlooked, inadvertently, a letter of April 4, 1973, in which the Forest Service withdrew its consent to issuance of a prospecting permit to certain lands described in Ozark's application ES 9198. The forest Service reported the lands had been designated as a Special Management Area and legislative action was pending on them. The Forest Service renewed its consent to issuance of a prospecting permit on the remaining 218.09 acres in the application, situated in sec. 16, T. 12 S., R. 6 E., 3rd P.M. A permit for the lands in sec. 16 was issued effective April 1, 1974, and BLM, by decision of March 25, 1974, rejected the application to the lands for which the Forest Service withdrew its consent. This appeal followed.

Ozark contends that the withholding of the consent of the Forest Service is unreasonable since it is dependent upon pending legislation; that reversal of the BLM decision of September 25, 1973, was misleading and unjust; and that Ozark wishes to explore for fluorite, a mineral valuable to the strategic needs of the Nation, and the exploration would not interfere with any type of management proposed by the Forest Service.

[1] The land in question was acquired by the Forest Service pursuant to the Weeks Act of March 1, 1911, 36 Stat. 961. Jurisdiction over solid (hardrock) minerals in these lands was transferred to the Secretary of the Interior by Sec. 402, Reorganization Plan No. 3 of 1946, 60 Stat. 1099. Mineral development may be permitted by the Secretary of the Interior, however, only with the consent of the Secretary of Agriculture, and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired or are being administered. 43 CFR 3501.2-6(a); Henry R. Gerritsen, 3 IBLA 90 (1971).

1/ Ozark did not appeal from this decision.

2/ Ozark complied with the decision and submitted executed copies of the stipulations on October 1, 1973.

[2, 3] Filing of an application for a prospecting permit on acquired lands establishes no vested right in the applicant. Until a permit actually is issued, the administering agency may require additional stipulations to be accepted as a condition precedent to issuance of any permit, or withdraw its consent earlier given. In such cases the Department of the Interior has no jurisdiction to waive execution of special stipulations or to alter the terms thereof. Cf. Susan B. Snyder, 9 IBLA 91 (1973). The applicant, rather than this Department, must seek from such agency any modification or qualification of the lack of consent to issuance of a permit. Cf. Duncan Miller, 5 IBLA 364 (1972).

It is unfortunate that the retraction of the Forest Service consent was overlooked by BLM in its decision of September 25, 1973, when Ozark was called upon to execute special stipulations. Nevertheless when the error was perceived it was mandatory for BLM to conform to the recommendation of the Forest Service and reject the application of Ozark to the extent set forth in the decision of March 25, 1974. An applicant for a hardrock prospecting permit acquires no vested right to receive such a permit but only an inchoate right to receive such a permit if the agency having surface jurisdiction does not object to issuance of the permit. Cf. United Manufacturing Company, 65 I.D. 106 (1958).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

